

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Alberto SID
Serial No.: 10/825,066
Filed: 15 April 2004
Title: Remote Controlled Intelligent Lighting System
Group Art Unit: 2821
Examiner: VO, TUYET THI
Attorney Docket: 226/3

ELECTION AND TRAVERSE

This paper is in response to the restriction requirement mailed 16 February 2007. Applicant chooses Species 1 indicating claims 2-17, 38 and 39. Simultaneously, Applicant is traversing the restriction requirement.

This traverse is based on each of claims 38, 19 and 34 involving the same invention and which are neither independent nor distinct. 802.1 of the MPEP indicates that independent necessarily means not dependant or "that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect." The term "distinct" means that "two or more subjects as disclosed are related, but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art)."

The control system and addressable lighting device of all three independent claims is common and generic. Further the three elements for the system including an addressable lighting device, a programming mode and a remote control is common to all independent claims. Therefore, the independent claims in the application are generic.

Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; and (B) the reasons for insisting upon restriction therebetween as set forth in the following sections. See MPEP 808. The present restriction requirement indicates three distinct species as sub combinations useable together. However no indication is made as to the reason why the indicated species or sub combinations are independent or distinct. As far as the applicant can ascertain “no claim is generic” is the reason for restriction. Such a statement is a statement of conclusion based on independent and distinct species and provides no basis for determining claims to be independent and distinct. There must be a patentable difference between the species as claimed. See MPEP § 806.04(h). However, no patentable distinct difference is provided. See MPEP § 806.04(h).

Additionally, restriction is improper where as MPEP 806.03 states: “Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction there between should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition.” As indicated above the essential elements of the disclosed embodiment are common in each of the independent claims. In each of the independent claims the one or more of the disclosed elements may be defined in a different manor and each element varies in scope by incorporating a further limiting more precise definition of the element.

The following elements are generic to all claims:

1. a remote control;
2. at least one addressable lighting device
 - a. with an electronic address
 - b. a detecting means for detecting signals from said remote control, (which by definition in the specification of the application is the same as the “receiving means”)

- c. a means for switching said addressable lighting device into a programming mode;
 - d. a microcontroller;
3. a programming mode

Thus there is a generic claimed invention and the restriction requirement should be withdrawn.

Dated: 12 March 2006

Respectfully submitted,
Lilling & Lilling P.C.
(Cust. No. 24,101)

By/Sean Liam Kelleher/
Bruce E. Lilling (Reg. No. 27,656)
Sean Liam Kelleher (Reg. No. 54,212)
P.O. Box 560
Goldens Bridge, New York 10526
Phone (914) 684-0600 x5
Fax (914) 684-0304